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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDY SABERI,

Defendant and Appellant;

PAWAN K. GARG et al.,

Defendants and Respondents.

A102091

**(Alameda County
Super. Ct. No. H-184353-6)**

ANDY SABERI,

Plaintiff and Appellant,

v.

SHELL OIL COMPANY et al.,

Defendants and Respondents.

A102543 & A103463

**(Alameda County
Super. Ct. No. 821274-8)**

These consolidated appeals concern disputes that have arisen following entry of a stipulated final judgment in an environmental law enforcement action brought by the State of California to cleanup petroleum contamination at an abandoned gas station site. Years after the stipulated final judgment was entered, one party (Andy Saberi) filed a separate lawsuit seeking damages from others arising from claims of alleged nonperformance under the stipulated final judgment. The new lawsuit, in turn, spurred

two other parties (Pawan K. Garg and Som D. Gupta) to reach a new, separate settlement with the State of California, effectively releasing them from further participation in the contamination cleanup efforts.

In this decision, we conclude a postjudgment order to enter satisfaction of judgment for Garg and Gupta is unsupported by substantial evidence that the nonmoney judgment was satisfied in fact, and we find that the postjudgment settlement with the State of California is not subject to the statutes governing good faith settlements (Code Civ. Proc., §§ 877, 877.6). We also determine that the filing of the separate lawsuit by Saberi was permissible under California law and under the terms of the stipulated final judgment, and we reverse an award of attorney fees in favor of Garg and Gupta.

BACKGROUND

Appellant Saberi owns commercial property located in Oakland (the site). Respondents Garg and Gupta leased the site from Saberi, where Garg and Gupta operated a gas station until it closed due to the collapse of the Cypress Freeway in the 1989 Loma Prieta earthquake.

In August 1989, Garg and Gupta sued Saberi and his corporation, Sabek, Inc., for breach of contract and other claims arising from having allegedly supplied Garg and Gupta with misbranded fuel. (*Gupta v. Saberi* (Super. Ct. San Mateo County, 1995, No. 343614) (the misbranded fuel action).) In February 1991, Saberi filed a separate lawsuit against Garg and Gupta alleging breach of the lease contract to operate a gas station at the site. (*Saberi v. Gupta* (Super. Ct. San Mateo County, 1995, No. 358894) (the Saberi I action).) The two lawsuits were consolidated by the San Mateo County Superior Court (hereafter, collectively, the consolidated misbranded fuel/Saberi I action).

In April 1995, Saberi and Shell Oil Company (Shell), entered into a separate settlement agreement (the Saberi/Shell agreement) of any claims they “may have or could make” arising out of the consolidated misbranded fuel/Saberi I action and alleged contamination at the site. Among other provisions, the Saberi/Shell agreement recited those parties’ intention to resolve their liability to Alameda County and to the State of

California for petroleum contamination at the site by executing a stipulated final judgment with the State of California to be filed in the Alameda County Superior Court.

In June 1995, the State of California filed the anticipated complaint against Saberi, Shell, Garg and Gupta, in Alameda County Superior Court seeking injunctive relief and civil penalties for alleged violations of statutes related to the underground storage of hazardous substances at the commercial property. (Health & Saf. Code, §§ 25280 et seq., 25299.10 et seq.) (*People v. Saberi* (Super. Ct. Alameda County, 2003, No. H-184353-6) (the environmental law enforcement action).) At that same time, those parties filed the stipulated final judgment (the stipulated judgment) of the environmental law enforcement action, which was approved by the Alameda County Superior Court.

Among its other provisions, the stipulated judgment obligated Saberi to correct the petroleum contamination and obligated Shell to administer the corrective action at the site. Garg and Gupta were required to maintain the site against the accumulation of surface debris and against fire risk by actions including fencing the site, and by conducting weekly inspection and debris removal. Under the stipulated judgment, the court retained jurisdiction enabling any party “to apply to the court at any time for such further orders and directives as may be necessary or appropriate, including the issuance of civil penalties, or the assessment of costs for violations from the time of judgment forward.” The stipulated judgment provided that, in the event any party failed to comply with its terms, the State of California should take escalating steps to enforce the judgment, beginning with informal dispute resolution, followed by initiation of contempt proceedings with the court.

In September 1995, Garg and Gupta entered into a mutual release and settlement agreement with Saberi in the consolidated misbranded fuel/Saberi I action, releasing all claims between themselves related to the petroleum contamination at the site and arising from the leasing, operation and maintenance of the site. The settlement agreement contains an attorney fees provision obligating any party who brings a claim contrary to that settlement agreement to pay all related damages, costs, and expenses, including court costs and attorney fees.

Four years later (January 2000), Saberi filed a new lawsuit alleging Garg, Gupta and Shell had failed to comply with the terms of the stipulated judgment. (*Saberi v. Shell* (Super. Ct. Alameda County, 2003, No. 821274-8) (the Saberi II action).) In April 2002, Saberi filed a first amended complaint, adding a host of additional claims arising from the alleged noncompliance, including negligence, waste, trespass and nuisance.

In December 2002, the State of California entered into a separate, new settlement with Garg and Gupta whereby it agreed to release them from any further surface cleanup obligation at the site based on their past performance of those responsibilities and their agreement to make a \$5,000 closing payment to the City of Oakland for six months of estimated future cleanup expenses at the site.

Garg and Gupta made successful motions for satisfaction of judgment and for good faith settlement (as to Garg and Gupta only) in the environmental law enforcement action.¹ Garg and Gupta also moved for judgment on the pleadings in the Saberi II action, asserting that the new lawsuit was barred by enforcement procedures in the stipulated judgment. Shell joined in the motion for judgment on the pleadings, and Saberi opposed the motion. The court granted the motion for judgment on the pleadings and entered judgments in favor of Garg, Gupta and Shell. The court later awarded Garg and Gupta attorney fees against Saberi in the amount of \$32,361.50. These consolidated appeals followed.

DISCUSSION

THE ENVIRONMENTAL LAW ENFORCEMENT ACTION

I. Entry of Satisfaction of Judgment

In seeking entry of satisfaction of judgment in the trial court, Garg and Gupta asserted the court's power to make such an order derived from Code of Civil Procedure² section 724.050, subdivision (d), and from the court's inherent judicial power to fashion an appropriate procedure to order satisfaction of judgment if none is already established

¹ Shell and Saberi opposed the motion for good faith settlement, and Saberi opposed the motion for entry of satisfaction of judgment.

² All undesignated section references are to the Code of Civil Procedure.

by statute or case law. Garg and Gupta supported the motion with an acknowledgement of satisfaction of judgment, executed by the State of California, and an accompanying stipulation setting forth the factual basis for the acknowledgment. In the stipulation, the State of California represented that Garg and Gupta had fulfilled their obligations under the stipulated judgment because, during the seven-year period between 1995 and 2002, they had twice fenced the property at a combined expense of \$38,961; paid for periodic cleanup of surface debris and equipment costing another \$56,000; and paid the City of Oakland \$5,000 to be applied to recent and current cleanup expenses at the site. The stipulation further represented that, although the State of California had not been completely satisfied with the frequency and quality of Garg and Gupta's cleanup activities during the seven years since the stipulated judgment, their performance had been in "substantial compliance" with the stipulated judgment and was being accepted by the State of California as "full satisfaction" of Garg and Gupta's obligations under the stipulated judgment.

In its decision granting the motion to enter satisfaction of judgment, the trial court made specific note that the State of California had acknowledged satisfaction of judgment as to Garg and Gupta. The court then ordered the clerk to enter satisfaction of judgment based on section 724.020.

On appeal, Saberi raises a legal challenge to the court's order based on his assertion that those sections only apply to satisfaction of *money* judgments. He claims the stipulated judgment was not a money judgment, and hence, that the trial court lacked authority under those sections to order entry of satisfaction of judgment. Separately, he argues there was no substantial evidence to support a finding that Garg and Gupta had, in fact, satisfied the stipulated judgment.

The question of whether the trial court had authority under section 724.020 to order entry of the satisfaction of judgment is an issue of law, subject to our independent review. (See *Woo v. Superior Court* (2000) 83 Cal.App.4th 967, 974; *Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1094-1095.) Any factual determinations made by the trial court concerning the matter are reviewed on appeal

under the substantial evidence standard. (*George S. Nolte Consulting Civil Engineers, Inc. v. Magliocco* (1979) 93 Cal.App.3d 190, 193-194 (*Nolte*).) All evidence is considered in the light most favorable to the prevailing party and all reasonable inferences are made in support of the trial court's decision. (*Estate of Beard* (1999) 71 Cal.App.4th 753, 778-779.) We review the trial court's ruling and not its rationale. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216 (*Schabarum*).)

Section 724.020³ is phrased as applying to “a money judgment.” The term “money judgment” is defined in section 680.270 to mean “that part of a judgment that requires the payment of money.”

Garg and Gupta readily concede that section 724.020 applies to money judgments, but they argue the trial court nevertheless had authority to issue its order in this instance based on its inherent equity, supervisory and administrative powers to implement procedures for nonmoney judgments equivalent to the procedures in section 724.020. They rely upon the court's “ ‘inherent power . . . to adopt any suitable method of practice, both in ordinary action and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council.’ ” . . . [Citation.]” (*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1378.)

We find it unnecessary to analyze either side's proffered basis for jurisdiction in order for us to resolve the appeal from the order to enter satisfaction of judgment because the order is not supported by substantial evidence.

“ ‘When a finding of fact is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact. [Citations.] [¶] When two or more inferences can reasonably be deduced from the facts, a reviewing court is without

³ Section 724.020 provides: “The court clerk shall enter satisfaction of a money judgment in the register of actions when the following occur: [¶] (a) A writ is returned satisfied for the full amount of a lump-sum judgment. [¶] (b) An acknowledgment of satisfaction of judgment is filed with the court. [¶] (c) The court orders entry of satisfaction of judgment.”

power to substitute its deductions for those of the trial court.’ ” (*Scott v. Common Council* (1996) 44 Cal.App.4th 684, 689, quoting *Green Trees Enterprises, Inc. v. Palm Springs Alpine Estates, Inc.* (1967) 66 Cal.2d 782, 784-785.) We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court’s findings and decision, resolving every conflict in favor of the judgment. [Citations.]” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

Here, the evidence showed that the State of California had agreed to release Garg and Gupta from further site maintenance at the site based on their performance during the seven-year period following the stipulated judgment. Garg and Gupta had spent approximately \$100,000 on site maintenance activities. The State of California was satisfied with moving parties’ performance and considered it “full satisfaction” of their obligations under the stipulated judgment. The trial court relied on this fact in reaching its decision to order entry of satisfaction of judgment.

Simply because the State of California was satisfied with moving parties’ performance is insufficient to support satisfaction of the stipulated judgment in this case. It is manifest that Garg and Gupta did not, in fact, fully perform their obligations under a judgment that obligated them to perform specific actions (physical inspection and maintenance) at the site until the Alameda County Department of Environmental Health has “approved closure” of the environmental corrective action at the site. The undisputed evidence established that the Alameda County Department of Environmental Health had made no “approved closure” of the site as of the date the State of California acknowledged satisfaction with moving parties’ performance.

Of course, when a judgment involves only two parties, the prevailing party is entitled to accept less than full compliance with the judgment by the other. Even when multiple parties jointly owe a money judgment to a judgment creditor, that creditor may accept less than full payment in satisfaction of the judgment by one party, while the other parties remain liable for the balance of the judgment. (*McCall v. Four Star Music Co.* (1996) 51 Cal.App.4th 1394, 1401; *Bank of America v. Duer* (1941) 47 Cal.App.2d 100,

102.) In the latter situation, granting satisfaction of judgment to one party does not increase any obligation of the others, because each was responsible for the entire judgment. (Cf. *Holt v. Booth* (1991) 1 Cal.App.4th 1074, 1079-1080 & fn. 5.)

Here, the situation is different. As the State of California conceded at oral argument, if Garg and Gupta are excused from performing their obligation under the lease to maintain the site until approval for the remediation is granted, this obligation will be shifted to Saberi, the property owner, who was excused from this task by the settlement. Thus, the acknowledgment of satisfaction given to Garg and Gupta did not, in fact, acknowledge that their maintenance responsibilities had been satisfied, it merely shifted them to other parties. This significant modification of the judgment may not be accomplished by a satisfaction of judgment.⁴

The order to enter satisfaction of judgment is reversed.

II. *Good Faith Settlement Determination*

Saberi contends that Garg and Gupta were precluded by California law and by the terms of the stipulated judgment from having their settlement with the State of California determined to be in good faith under sections 877 and 877.6.⁵ Specifically, Saberi

⁴ At oral argument, Garg and Gupta argued that if this challenged order is viewed as a modification of the judgment, the trial court's action was still proper. The stipulated judgment provides that the settlement can be modified only with the written consent of the parties and approval by the court. Garg and Gupta contend, however, that, despite the express language of the stipulation, the court retains inherent power to modify its equitable judgment to ensure that equity continues to be served. The trial court did not entertain this argument and we conclude that it is not reasonable to view the court's decision below as an exercise of such power.

⁵ Section 877 provides:

“Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect:

“(a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater.

“(b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties.

contends that motions to determine good faith settlement, brought under sections 877 and 877.6, do not apply to postjudgment settlements. In addition, he asserts the settlement with the State of California constituted a material change in the terms of the stipulated judgment, and was therefore precluded by the portion of the stipulated judgment stating it “may be modified upon written approval of the parties hereto and the court.” He further argues that case authorities prohibit a court from changing the terms of a stipulated judgment without the mutual consent of the parties.

“(c) This section shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

“(d) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 1988.”

Section 877.6 provides, in part:

“(a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

“(2) In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested. Proof of service shall be filed with the court. Within 25 days of the mailing of the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of personal service, the court may approve the settlement. The notice by a nonsettling party shall be given in the manner provided in subdivision (b) of Section 1005. However, this paragraph shall not apply to settlements in which a confidentiality agreement has been entered into regarding the case or the terms of the settlement.

“(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.

“(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.”

A good faith settlement discharges the settling defendant from liability for contribution to other parties. (§ 877.) Nonsettling parties are protected from paying a disproportionate share of a later judgment by the statutory procedure for a hearing on the issue of the good faith of the settlement. (§§ 877, 877.6, subd. (a).) Upon the trial court's determination of the good faith of a settlement by one of the joint tortfeasors, the settling defendant is discharged from liability to the plaintiff and also from liability for contribution or comparative indemnity to the other defendants. (§§ 877, subd. (b); 877.6, subds. (a) & (c); *Far West Financial Corp. v. D & S Co.* (1988) 46 Cal.3d 796, 800, 817.) In return, to avoid unfairness to the nonsettling defendants, the plaintiff's claims against the nonsettling defendants are reduced by the amount of the settlement. (§ 877, subd. (a).) In this way, the code sections governing good faith settlements serve the dual purpose of encouraging settlement and providing for an equitable financial sharing among the defendants. (*Tech-Built, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 494.)

“Ordinarily, the determination of whether a settlement is in good faith is left to the discretion of the trial court and may be reversed only upon a showing of abuse of discretion. [Citation.] However, where . . . the issue is one of statutory interpretation and application of the statute to undisputed facts, the question is one of law subject to the appellate court's independent review. [Citation.]” (*Be v. Western Truck Exchange* (1997) 55 Cal.App.4th 1139, 1143 (*Be*).) Any factual determinations underlying a court's good faith determination are reviewed under a substantial evidence standard. (*Norco Delivery Service, Inc. v. Owen-Corning Fiberglas, Inc.* (1998) 64 Cal.App.4th 955, 962-963.)

Here, Saberi contends that motions to determine good faith settlement under sections 877 and 877.6 do not apply to settlements made *after* a verdict or judgment. We agree.

The good faith settlement procedures of sections 877 and 877.6 only apply to settlements made “before verdict or judgment.” (§§ 877, 877.6, subd. (a)(1); *Be, supra*, 55 Cal.App.4th at p. 1144; *Torres v. Xomox Corp.* (1996) 49 Cal.App.4th 1, 39 (*Torres*);

Southern Cal. White Trucks v. Teresinski (1987) 190 Cal.App.3d 1393, 1403-1408 (*Teresinski*); *Halpin v. Superior Court* (1971) 14 Cal.App.3d 530, 543 (*Halpin*); *Thomas v. General Motors Corp.* (1970) 13 Cal.App.3d 81, 86; but see *Price Pfister, Inc. v. William Lyon Co.* (1993) 14 Cal.App.4th 1643, 1649 [§§ 877 & 877.6 apply to settlement after finding of liability though before assessment of damages].) This restriction on the use of the good faith settlement procedures is justified by a policy precluding their application after the scope of the actual liability to a plaintiff has been determined by verdict or judgment. Once a verdict or a judgment affixing liability has been rendered, the joint defendants already know the scope of their actual liability to the plaintiff and, hence, the extent of their exposure to the other defendants for comparative indemnification. A plaintiff who thereafter settles with any joint defendant for an amount less than the settling defendant's actual liability under the verdict or judgment, knows that the other judgment debtors remain responsible to make up any shortfall. Meanwhile, allowing a defendant to settle with the plaintiff under the good faith settlement procedures for something less than what was required under a preexisting verdict or judgment, discharges that settling defendant from liability for contribution toward the nonsettling defendants, thereby unfairly shifting the remaining burden to the nonsettling defendants beyond what was established by the verdict or judgment. (*Be*, at p. 1144; *Torres*, at pp. 39-40.)

The circumstances in *Teresinski* are instructive. There, the injured plaintiff settled with all the defendants but one, Vic's Auto Sales, prior to trial. After judgment was entered in favor of the plaintiff (reduced by the amount of the pretrial settlements), the plaintiff and Vic's Auto Sales reached a settlement conditioned upon a stipulation that the judgment be vacated. The trial court vacated the judgment, found the settlement to be in good faith, and then dismissed the cross-complaints for comparative indemnity brought against Vic's Auto Sales by two other defendants. (*Teresinski*, *supra*, 190 Cal.App.3d at pp. 1398-1399.) On appeal, the court reversed, holding that the trial court should not have vacated the judgment and that section 877.6 did not bar the cross-complaints for indemnity because the settlement between the plaintiff and Vic's Auto Sales was entered

after judgment. (*Teresinski*, at pp. 1408.) The *Teresinski* decision was followed in *Be* to reach the same general result; namely, to invalidate a settlement that had extinguished the rights of one joint tortfeasor to seek indemnity or contribution from another joint tortfeasor, entered into *after* the extent of total liability to the plaintiff already had been established. (*Be, supra*, 55 Cal.App.4th at pp. 1142, 1144.)

The outcome reached in the *Teresinski* and *Be* decisions is also warranted here inasmuch as the unilateral postjudgment settlement with Garg and Gupta, on terms less than what was called for in the stipulated judgment, in effect, shifted their responsibilities to the other judgment debtors under the stipulated judgment. Furthermore, in reaching the postjudgment settlement, the State of California had no incentive to drive a hard bargain with Garg and Gupta since it knew that Garg and Gupta's responsibilities would have to be assumed by the other judgment debtors. (*Be, supra*, 55 Cal.App.4th at p. 1144.)

Even though the State of California (as the sole judgment creditor) may have been willing to release Garg and Gupta from further obligations under the stipulated judgment, since the good faith settlement procedures of sections 877 and 877.6 do not apply to the postjudgment settlement, the remaining defendants retain their rights to contribution and comparative indemnity against Garg and Gupta. (§§ 877, 877.6; *Be, supra*, 55 Cal.App.4th at p. 1144; *Teresinski, supra*, 190 Cal.App.3d at pp. 1401; see *Halpin, supra*, 14 Cal.App.3d at p. 543.) This result is also consistent with the terms of the stipulated judgment wherein defendants had expressly agreed to reserve among themselves "all rights (including any right to contribution)" that defendants might have with respect the environmental law enforcement action or the stipulated judgment.

Garg and Gupta attempt to distinguish the settlements reached in *Teresinski*, *Be* and *Halpin* from Garg's and Gupta's postjudgment settlement with the State of California based on the assertion that the disputed settlement in this case was reached "before liability was established by verdict or judgment." Garg and Gupta rely upon a provision of the stipulated judgment stating that the stipulation could not be construed as a finding

or admission of liability by defendants.⁶ The argument is unpersuasive because it disregards the factors pivotal to the outcome of our analysis; namely, that the stipulated judgment: (1) triggered *liability* in the sense of making defendants joint judgment debtors with respect to the State of California; and (2) established the scope of the liability owed to the State of California, thereby setting the extent of the exposure among defendants for comparative indemnification. Once those factors were established by the stipulated judgment, the subsequent *new deal* made by Garg and Gupta shifted the burden to the remaining defendants to cover any shortfall. This shift undermines the fairness of allowing Garg and Gupta, as the settling defendants, to rely upon the good faith settlement provisions to discharge themselves from liability for contribution or comparative indemnity to the other defendants. (§§ 877, subd. (b); 877.6, subs. (a) & (c).)

Because the sections governing good faith settlements (§§ 877, 877.6) do not apply to this postjudgment settlement, the trial court should have denied Garg and Gupta’s motion for good faith settlement.

THE SABERI II ACTION

I. *Rulings Granting Judgment on the Pleadings*

A. *Standard of Review*

“Because a motion for judgment on the pleadings is similar to a general demurrer, the standard of review is the same. [Citation.] We treat the pleadings as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Baughman v. State of California* (1995) 38 Cal.App.4th 182, 187.) “Matters which may be judicially noticed may also be considered. [Citation.]” (*Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1104.) “We review the complaint de

⁶ The stipulated judgment provides, in part: “Plaintiff and defendants agree that neither this stipulation, nor the entry into this stipulation, nor any performance under this stipulation, shall be construed as a finding or admission of any fact or allegation contained in the complaint or in this stipulation, *or of any liability*, or admission by defendants” (Italics added.)

novo to determine whether [it] alleges facts sufficient to state a cause of action under any legal theory. [Citation.]” (*Begier v. Strom* (1996) 46 Cal.App.4th 877, 881.)

Where, as here, leave to amend was not granted, we determine whether the defect can reasonably be cured by amendment. The judgment is to be affirmed if it is proper on any lawful grounds raised in the motion, even if the trial court did not rely on those grounds in rendering its ruling. (*Schabarum, supra*, 60 Cal.App.4th at p. 1216.) We review the court’s denial of leave to amend for abuse of discretion. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. *Shell’s Motion*

In granting Shell’s motion for judgment on the pleadings, the trial court reasoned that the gravamen of Saberi’s first amended complaint was Shell’s alleged failure to perform in accordance with the terms of the stipulated judgment in the environmental law enforcement action. The court determined that under paragraph 10 of the stipulated judgment, Saberi’s exclusive remedy to seek enforcement of the stipulated judgment was by applying for relief from the court in the environmental law enforcement action. Paragraph 10 of the stipulated judgment provides: “Jurisdiction is retained by the court for the purpose of enabling any party to this stipulation to apply to the court at any time for such further orders and directives as may be necessary and appropriate, including the issuance of civil penalties, or the assessment of costs for violations from the time of judgment forward.”

Saberi contends the ruling was legally incorrect based on his assertion that he was statutorily entitled to file a new action to enforce the stipulated judgment and that nothing in the stipulated judgment mandated that paragraph 10 would be the sole means for the parties to enforce the provisions of the stipulated judgment. We agree.

There are multiple ways in which parties may enforce a judgment, depending on the nature and circumstances surrounding the judgment, including: (1) pursuing specific statutory enforcement proceedings prescribed under the Code of Civil Procedure (see generally § 680.010 et seq. [tit. 9, Enforcement of Judgments]); (2) filing a new action on a judgment (see, e.g., Civ. Code, § 1432; Code Civ. Proc., §§ 337.5, 683.050; *Pratali v.*

Gates (1992) 4 Cal.App.4th 632, 637); or (3) seeking enforcement of the judgment from the court that entered the judgment when the court has retained its jurisdiction to provide such enforcement.

Here, the focus of the dispute concerns whether the terms of the stipulated judgment obligated Saberi to pursue the third option alone. We find nothing in the stipulated judgment obligating Saberi to do so.

Paragraph 4 expressly reserves each defendant's claims and defenses against one another relating to the complaint in the environmental law enforcement action and the stipulated judgment. Paragraph 10 retains jurisdiction with the trial court enabling any party to seek "such further orders and directives as may be necessary or appropriate," but expresses no limitation on the right of any defendant to pursue claims against the other defendants in other ways prescribed by the law. Paragraph 12 specifies procedures that the State of California "shall take . . . to enforce the judgment" but, again, is silent on the steps a defendant can take to enforce the judgment.

"Where a contract expressly provides a remedy for a breach thereof, the language used in the contract must clearly indicate an intent to make the remedy exclusive." (*Nelson v. Spence* (1960) 182 Cal.App.2d 493, 497.) Here, the stipulated judgment includes no expression of such an intent.

In addition, Shell reasserts its argument below that Saberi lacks standing to sue for claims arising from the stipulated judgment because Saberi was a judgment debtor under the stipulated judgment, rather than a judgment creditor. Shell asserts that the right to bring an action on a judgment under Code of Civil Procedure sections 337.5 and 683.050 is available solely to a judgment creditor. Although we agree that section 683.050 applies by its terms to a "judgment creditor," section 337.5 applies more generally to an "action upon a judgment." Shell has cited us no authority precluding application of section 337.5 to an action upon a judgment brought by one joint judgment debtor against another for failure to satisfy its appropriate contribution toward satisfaction of the judgment. Shell's argument disregards the right of Saberi, as a joint debtor under a judgment, to bring a separate action against other joint debtors based on rights to

contribution and comparative indemnity. (See, e.g., Civ. Code, § 1432; *Woolley v. Seijo* (1964) 224 Cal.App.2d 615, 621-622.)

Shell contends the causes of action in the first amended complaint are contrary to the express terms of a mutual release within the Saberi/Shell agreement by which each party agreed to release, forever discharge, and covenant not to sue one another “with regard to any and all existing or potential demands, causes of action, equitable or legal claims, obligations, damages, losses, penalties and liabilities of any nature whatsoever, whether asserted or unasserted, known or unknown, arising out of or in connection with contamination” of the site. Shell argues that every cause of action within the first amended complaint is a claim “ ‘arising out of’ or . . . ‘in connection with’ petroleum hydrocarbon contamination” at the site. The contention is unavailing because it could only include claims and potential claims as they existed at the time of the mutual release (April 1995), and would not include claims arising out of Shell’s alleged subsequent failure to carry out its obligations under the Saberi/Shell agreement or the stipulated judgment.

Finally, for the first time on appeal, Shell argues that Saberi cannot recover for breach of the stipulated judgment because Saberi is unable to allege his own complete performance under the stipulated judgment, which Shell asserts is a prerequisite to recovery under a contract claim. We will not address arguments first raised on appeal. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486.)

None of the grounds asserted by Shell in its motion for judgment on the pleadings has merit. Accordingly, the trial court erred in granting the motion.

C. Garg’s and Gupta’s Motion

The record establishes the trial court relied upon its ruling granting Garg’s and Gupta’s motion for good faith settlement in the environmental law enforcement action to grant their motion for judgment on the pleadings. Having determined earlier in this opinion that the order granting the motion for good faith settlement must be reversed, we find that the order granting motion for judgment on the pleadings likewise cannot be sustained on the ground relied upon by the trial court.

The only other basis for judgment on the pleadings raised in Garg's and Gupta's motion was the same argument asserted in Shell's motion claiming that the terms of the stipulated judgment mandated the parties enforce its provisions only by petitioning the court for further orders and directives in the environmental law enforcement action. We reject the argument for the same reasons discussed with regard to Shell's motion.

Neither the ground asserted by Garg and Gupta nor the ground relied upon by the trial court can sustain the judgment on the pleadings in favor of Garg and Gupta. Accordingly, the judgment on the pleadings must be reversed.

II. *Award of Attorney Fees To Garg and Gupta*

The trial court granted Garg's and Gupta's motion for an award of attorney fees based on their having prevailed on the motion for judgment on the pleadings. Because we reverse the order granting the motion for judgment on the pleadings, we also reverse the order awarding them attorney fees. (*Metropolitan Water Dist. v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4th 1403, 1436-1437.)

DISPOSITION

The postjudgment order granting entry of satisfaction of judgment to Garg and Gupta in Alameda County Superior Court No. H-184353-6 is reversed. The postjudgment order granting Garg's and Gupta's motion for good faith settlement in Alameda County Superior Court No. H-184353-6 is reversed.

The judgment on the pleadings granted to Shell in Alameda County Superior Court No. 821274-8 is reversed. The judgment on the pleadings granted to Garg and Gupta in Alameda County Superior Court No. 821274-8 is reversed. The postjudgment order granting the award of attorney fees to Garg and Gupta in Alameda County Superior Court No. 821274-8 is reversed.

Appellant Saberi is awarded his costs on appeal.

SIMONS, J.

We concur.

STEVENS, Acting P.J.

GEMELLO, J.